In the High Court of Uttaranchal, at Nainital.

Civil Writ Petition No. 514/2003(S/B)

Vivek Malaviya,
S/o Ashok Malaviya,
R/o 46/4 Street No.9, Rajendra Nagar,
District Dehradun …….. Petitioner.

Versus

Oil & Natural Gas Corporation Ltd.
and four others .. Respondents.

Sri Rajendra Dobhal, learned counsel for the petitioner.
Sri L.P. Naithani, Senior Advocate, learned counsel
for the respondents.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 06-03-2006

By way of this writ petitions, the petitioners has sought a direction in the nature of certiorari for quashing the impugned ordered dated 3-1-2000, 22.8.2003 and 8.9.2003, contained in Annexure Nos. 12, 14 and 15 to this writ petition, passed by the respondents 2 and 3 respectively, also sought a direction in the nature of mandamus commanding the respondents to give the notional promotion to the petitioner to the post of Assistant Engineer (Electrical) w.e.f. 1.1.1989, while the chargemen (Electrical) not fulfilling the required criteria of Regulation 1980, were promoted and give all consequential benefits thereafter.

2- Brief facts as per the writ petition are that the petitioner was appointed on the post of Junior Engineer (Electrical) on 21-4-1988 in Oil and Natural Gas Commission and after completing four years service on the post of Junior Engineer (Electrical) with entire satisfaction of his superior authorities, the petitioner was promoted to the post of Assistant Engineer (Electrical) on 1-1-93.

3- The grievance of the petitioner is that the respondent Nos. 4 and 5, working as Charge-men (Electrical), were promoted to the post of Assistant Engineer, w.e.f. 31-12-1988, while they were not

qualified to be promoted to the said post and the promotion order, promoting the respondent Nos. 4 and 5, is in violation of the criteria laid-down in the Schedule-I of the Regulations, 1980. The petitioner has also averred in the writ petition that the respondents have not followed 50:50 quota of promotion from the post of Charge-man (Electrical) and Junior Engineer (Electrical) to the post of Assistant Engineer (Electrical) which is a blatant violation of the Recruitment & Promotion Regulation 1980.

4- The petition further reveals that the petitioner being aggrieved by the illegal and arbitrary action of the respondents, filed earlier writ petition in the year 1999 before the Allahabad High Court and the Allahabad High Court decided that writ petition on 13-10-1999, directing the respondent to decide the petitioner's representation within ten weeks. The respondent no.2 decided the representation of the petitioner and rejected the same vide his order dated 3-1-2000. The petitioner feeling aggrieved by the aforesaid rejection of the representation, again filed a writ petition in the year 2000 before the Allahabad High Court which was subsequently transferred to this court and the said writ petition was disposed of by this court vide its order dated 17-7-2003, directing the respondents to decide the claim of the petitioner in accordance with law and pass appropriate order. The petitioner thereafter made fresh claim for redressal of his grievances but the respondents again did not consider the real controversy in the matter and rejected the claim of the petitioner vide its order date 22-8-2003 and 8-9-2003. Therefore, the petitioner has again filed this writ petition for quashing the impugned rejection orders passed by the respondent Nos. 2 and 3 contained in Annexure Nos. 12, 14 and 15 to this writ petition.

5- Counter affidavit has been filed by the respondents 1, 2 and 3 stating therein that the seniority of the Junior Engineer (Electrical) has not been disturbed and the promotion of Charge-man (Electrical) is completely separate issue and does not have any relevance in the case of the petitioner. It has also been pleaded that the respondent Nos. 4 and 5 were Charge-men (Electrical) from 1-1-1984 and they were promoted with effect from 1-1-1988, thus

qualified for one time relaxation of two years experience under the M.O.U. The case of respondents 4 and 5 is not comparable with the petitioner. It has also been pleaded in the counter affidavit that the petitioner has been raising the same and one issue again and again and this petitioner being completely devoid of any merit, is liable to be dismissed.

6- We have heard the learned counsel for the petitioner Sri Rajendra Dobhal and learned counsel for the respondent Nos.1 to 3 Sri L.P. Naithani, Senior Advocate, and perused the record.

7- The main grievance of the petitioner is that some of the junior persons to the petitioner, have been promoted, while the petitioner has been promoted with effect from 1993. The case of the petitioner is that he should be given the notional promotion to the post of Assistant Engineer (Electrical) w.e.f. 1.1.1989. It is clear from the record that all the posts of Assistant Engineer are to be filled by promotion. Schedule- I to the Recruitment and Promotion Regulations 1980 shows that 50% are to be filled up from Junior Engineers while another 50% are to be filed by the Charge-man. We are unable to find out from record that any person junior to the petitioner from the feeding cadre of the Junior Engineers, has been promoted to the post of Assistant Engineer w.e.f. 1989. The seniority has to be reckoned as per rules when the promotion is to be made. We find nothing on record that there is combined seniority list for Junior Engineer (Electrical) and Charge-man (Electrical). The respondents have pleaded in the counter affidavit that feeding cadre of Charge-men and Junior Engineers are different and separate. It has also been pleaded that the petitioner was not qualified for the promotion as he joined the services in the year 1988.

8- Learned counsel for the respondents has argued that a person should have completed four years of service as Junior Engineer before he could be promoted and the petitioner had not fulfilled the basic requirement of four years service as Junior Engineer, thus was unfit for any promotion w.e.f. 1989.

9- Thus it is clear that the Junior Engineer (Electrical) and Charge-man (Electrical) are two feeder cadre for promotion to

Assistant Engineer (Electrical) and the seniority is maintained separately. Therefore, the petitioner does not have any valid and justified grievance. The rules permit promotion by seniority-cum-fitness. The grievance of the petitioner is misconceived and is liable to be rejected. As the petitioner joined the services in the year 1988 and he was promoted to the post of Assistant Engineer (Electrical) in the year 1993, that is, after completion of four years of his service as Junior Engineer, thereafter, we do not find any good ground to allow this writ petition.

11- The direction sought by the petitioner by way of this writ petition cannot be granted.

12- In view of the aforesaid observations, the writ petition lacks merit and is liable to be dismissed.

13- Accordingly the writ petition is dismissed.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

ISB